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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ARLENE I.,)	
)	
Appellant,)	2 CA-JV 2009-0009
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY and)	Appellate Procedure
ANGEL I.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 15543700

Honorable Virginia C. Kelly, Judge

AFFIRMED

Suzanne Laursen

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

E C K E R S T R O M, Presiding Judge.

¶1 Arlene I. appeals from the juvenile court’s order of January 28, 2009, terminating her parental rights to her son, Angel I., on grounds of Arlene’s mental illness and chronic substance abuse, *see* A.R.S. § 8-533(B)(3),¹ and her substantial neglect or willful refusal to rectify the circumstances that had caused Angel to be in a court-ordered, out-of-home placement for longer than nine months. *See* § 8-533(B)(8)(a).² Arlene challenges the sufficiency of the evidence to sustain the factual findings essential to establish each of the statutory grounds for termination as well as its finding that severing her rights was in Angel’s best interests. We find the evidence sufficient and affirm.

¶2 Before it may terminate a parent’s rights, a juvenile court must find by clear and convincing evidence the existence of at least one statutory ground for severance and must find by a preponderance of the evidence that terminating the parent’s rights is in the child’s best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we “accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance

¹To justify severance pursuant to § 8-533(B)(3), the state was required to prove in this case that Arlene “is unable to discharge parental responsibilities because of mental illness . . . or a history of chronic abuse of dangerous drugs [or] controlled substances . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.” *Id.*

²Termination of Arlene’s parental rights pursuant to § 8-533(B)(8)(a) required proof that Angel had been cared for in an out-of-home placement pursuant to court order for a cumulative period of nine months or longer, during which time Arlene had “substantially neglected or wilfully refused to remedy the circumstances that cause[d] the child to be in an out-of-home placement.” *Id.*

order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). If sufficient evidence supports any one of the statutory grounds alleged for termination, we need not consider arguments pertaining to other grounds alleged. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶¶ 12, 27, 995 P.2d 682, 685, 687 (2000).

¶3 Viewed in the light most favorable to sustaining the juvenile court’s ruling, *see Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), the evidence established the following facts. Arlene and her husband, David I., have been married for more than twenty-seven years and are the parents of four children. When Angel was born in June 1996, his two older brothers, Jimi and David, were approximately nine and ten years old; his sister Angelica was approximately thirteen. Both Arlene and David have lengthy histories of substance abuse and addiction, and David has an extensive criminal history as well. The family had been the subject of a number of previous substantiated and unsubstantiated reports of child abuse and neglect between 1990 and 1996. The 1996 report coincided with Angel’s birth, when tests revealed the presence of methadone and opiates in his system. He had experienced “significant delivery complications related to substance exposure” and suffered from “serious medical problems” as a newborn.

¶4 Over the next eleven years, the family apparently remained intact, and Angel’s three siblings reached adulthood. In November 2005, Arlene suffered a spinal cord injury that left her paraplegic. After a protracted recovery complicated by hepatitis and a major infection, by September 2007 Arlene could not care for herself independently; required

assistance with “bathing, dressing, and performing other personal care and household tasks”; and “require[d] skilled nursing [care,] as she [wa]s catheterized and ha[d] other critical medical needs.” In February 2007, Arlene’s and David’s daughter was shot and killed while celebrating her birthday at a nightclub, an event that exacerbated Arlene’s history of serious depression and apparently led both Arlene and David to relapse into their addictions to cocaine. And, shortly after their daughter’s death, their son, David, was incarcerated for murder.

¶5 The severance order Arlene challenges on appeal was the culmination of a dependency proceeding the Arizona Department of Economic Security (ADES) initiated in September 2007. A year earlier, in August 2006, Child Protective Services (CPS) had become re-involved with the family, for reasons the CPS investigator described as follows:

[Arlene] had recently had an accident which left her paralyzed from the waist down and her recovery was very complicated and slow. She had a lot of medical issues, and Angel at that time was not in school, although school had started a few weeks before that. The house was infested with roaches, and Angel was sleeping on the floor next to the mother’s bed.

The father was abusing substances and was in and out of the home, and there were concerns by other social services and medical providers working . . . with the mother at that time, because of the instability with the father in and out of the home and his erratic behavior because of substance abuse, that providers were afraid to provide services for the mother, which resulted in Angel carrying that load and caring for her and his needs being neglected. So we initially did an in-home service case and started monitoring the family pretty closely.

In the process, the investigator testified, CPS “tapped every possible resource [it] had” and “provided more for the family than most families are able to obtain” until February or March of 2007, when the family declined any further services. Because Angel by then was in school and there was no specific, immediate threat to his safety, CPS—“with great reluctance”—closed the case.

¶6 In mid-September 2007, however, CPS received a new report about the family. At that juncture, Angel again was not enrolled in school; both parents were abusing substances; Arlene was profoundly depressed; the police had been called repeatedly to investigate suspected substance abuse and domestic violence in the family; and their apartment was “filthy” and “absolutely infested” with roaches crawling everywhere. Because David was not dependably helping Arlene and there were no caregivers assisting the family at that particular point, eleven-year-old Angel “felt responsible for providing [his] mother’s care.” He frequently slept on a blanket on the floor next to his mother’s bed and reported “[h]elping [his mother] turn over at night, getting anything she needed, [providing] hygiene assistance, toileting assistance, anything that she needed.”

¶7 CPS thus took Angel into protective custody, and ADES filed the dependency petition, in mid-September 2007. Angel was adjudicated dependent the following month at a settlement conference his parents did not attend. They both were present, however, at the dependency disposition hearing, at which the juvenile court approved an initial case plan goal of family reunification and further approved the various rehabilitative services outlined in the case plan. At a permanency hearing in September 2008, the court ordered the case plan

goal changed to severance and adoption, based on the parents' "minimal progress with the case plan." The contested termination hearing followed on December 9, 10, and 12, 2008.

¶8 Because of her paraplegia, Arlene was eligible for "a multitude of services" through the Arizona Long Term Care System (ALTCS), a component of the Arizona Health Care Cost Containment System (AHCCCS). Pima Health Systems, on behalf of ALTCS, assigned a Pima Health Systems case manager who assessed Arlene's needs and eligibility for ALTCS services and coordinated the provision of those services. For purposes of the dependency proceeding, the significance of Arlene's ALTCS eligibility, as her ongoing CPS case manager testified, was that CPS could not independently refer her to any of its customary service providers. Mindy Flannery, the CPS investigator who had worked with the family in 2006 and again in 2007, similarly testified that behavioral health services for Arlene "needed to go through the Pima Health System's case manager." As Flannery further explained, "When I removed Angel, I made a referral through Arizona Families First for substance abuse mental health treatment for [Arlene], which was kicked back because it needed to go through the Pima Healthcare System[,] so another referral was made."

¶9 The tasks required of Arlene by her case plan were to submit periodic hair samples for drug testing; to participate in substance abuse treatment, individual therapy, and parenting classes or parent-aide services; and to document a stable source of income and housing. The services available to her through ALTCS included medical case management, skilled nursing care, home health care, transportation assistance, meal delivery, housekeeping, parenting instruction, mental health services, psychiatric evaluations, in-home

counseling, and substance abuse treatment. In addition, CPS provided Arlene with in-home visitation for a time and with transportation to court hearings, to child and family team meetings, to therapy sessions, to visitation with Angel after the in-home visits ended, and to other appointments related to her compliance with her CPS case plan tasks.

¶10 Although Arlene did participate in some of the services offered her and was in partial compliance with portions of her case plan, the single most critical task required of her was to achieve, maintain, and verify her sobriety. According to the information her Pima Health Systems case manager furnished to her CPS case manager, Arlene had refused substance abuse treatment. She had also either missed or cancelled a significant number of appointments for individual therapy sessions. Based on Arlene's noncompliance, Pima Health Systems ceased to provide that therapy.

¶11 The juvenile court ruled from the bench at the conclusion of the termination hearing. After first acknowledging the extraordinary amount of adversity and tragedy Arlene has experienced in her lifetime, the court stated its findings and conclusions in detail.

[J]ust to recount a bit of history, the minor was removed by CPS after a prior in-home dependency.

During that in-home dependency the services were, I believe the investigating worker testified, services were tapped out, meaning they provided all services that they were able to provide, and yet not many months after that was dismissed[,] CPS was again involved, investigating the home situation that affected Angel, and when he was removed it was due in part to that CPS history, in part to the roach infestation in the house, and then there was new information about the mother's substance abuse.

There were a number of things, including the mother's own statements about that. I'm not talking just about cocaine use, either, I'm talking about the fact that doctors stopped providing or prescribing morphine because the mother was misusing it, according to the reports, and that misuse has not been addressed in any way, and now I note that the doctors are again prescribing morphine and the mother is taking a pretty heavy dose or heavy variety of medication.

At the time that Angel was removed the mother was engaging in cocaine use, by her report, to address depression because of her daughter's murder. Angel was acting as a primary caregiver for her, assisting with certain medical needs, sleeping on the floor by her bed, by report, and was not attending school.

....

Dr. Rollins testified that the mother had a poor prognosis to parent successfully in the near future due to chronic substance abuse, mental illness, and the failure to address her own victimization issues in therapy.

....

The Court is making the following findings by clear and convincing evidence

As to the mother, she . . . has a history of prolonged cocaine addiction and heroin addiction. The cocaine addiction has not been addressed, and just because she may or may not be clean today does not address an addiction. This most recent period of use was attributed to depression following the death of her daughter, and anytime someone turns to controlled substances to self-medicate depression, that's an abuse of dangerous drugs.

The Court finds by clear and convincing evidence that the mother is not able to discharge her parental responsibilities due to mental illness in the form of depression, chronic abuse of dangerous drugs in the form of admitted cocaine and heroin

addiction, and misuse of narcotic drugs such as morphine[;] that she failed to address these issues through services provided[;] and that there are reasonable grounds to believe these conditions will continue for a prolonged indeterminate period based upon the testimony of Dr. Rollins.

So the Court finds also that the ground of mental illness, chronic substance abuse, is proven by clear and convincing evidence as to the mother.

As far as the out-of-home care, length of time in care issue, Angel has been out of the home for over 9 months due to this Court's order. The mother and father were offered and provided with a variety of opportunities for services, which they have both substantially neglected and in some instances willfully refused to remedy these conditions.

So the Court finds that the grounds of length of time in care are proven under A.R.S. [§] 8-533(B)(8)(a).

On the best interest issue, you have a child who still enjoys his parents' company, loves his parents in his way, his parents love him, and yet he's in a situation [now] which was described by one of his therapists as providing him with some hope to break away from the poor adult behavior that he has seen modeled for him and to allow him to have a better future, and particularly the therapist referred to gang activity, the use of dangerous drugs, not going to school, loss of respect for women based on the therapist's belief perhaps the way he saw his mother treated in the home. All of these things are things that he still has a chance to improve upon so that his adult behavior is more appropriate and more likely to bring him success.

The therapist testified that the mother's and father's drug use, the domestic violence, had a profound effect on Angel, that the requirement that he had to provide care to his mother after her accident, particularly because it appears that he had to do that because his father's drug use interfered with the father doing this, that he was therefore isolated from school and friends and from sports, and because of this he became parentified.

He did not receive help with his own loss issues. He has lost a sister to murder, he has a brother in prison on a murder charge, and he has another brother raising a family I don't know very much about, but this child needs help dealing with those loss issues. And then during the trial there was also the description of what would have to create emotional trauma for the child, and that is watching his father bring another woman into the home after the mother was injured and having sex with her in the home and [Angel's] being aware of that.

He also still has problems expressing emotion. He is afraid that his response to anger will be outbursts that he recognizes will be inappropriate, and he has poor coping skills. He has a relatively good relationship with the foster parents. He's formed an attachment and trusts them. He's an adoptable child.

So for all of the above reasons, the Court finds that it is in the minor's best interest that the parents' rights be terminated and makes the finding by a preponderance of the evidence.

¶12 In arguing the evidence was insufficient to justify severing her rights, Arlene points to those portions of the record that most strongly favor her position. Although there were indeed conflicts in the evidence, created largely by Arlene's testimony and highlighted in her arguments on appeal, the existence of such contradictions does not mean the evidence was insufficient. *See State v. Garfield*, 208 Ariz. 275, ¶ 9, 92 P.3d 905, 907-08 (App. 2004) (existence of conflicting evidence does not render contrary evidence insufficient to support conviction); *Kocher v. Dep't of Revenue*, 206 Ariz. 480, ¶ 9, 80 P.3d 287, 289 (App. 2003) ("A finding of fact is not clearly erroneous if substantial evidence supports it, even if substantial conflicting evidence exists."). The juvenile court, as the finder of fact, was

charged with resolving any such conflicts in the evidence, *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207, which it did expressly in making its oral findings.

¶13 Thus, for example, Arlene contends that ADES failed to make adequate efforts to provide her with individual therapy, substance abuse treatment, or other “adequate intervention” to help her deal with her depression and “substance abuse problem.” Despite the evidence, cited by Arlene, suggesting ADES could have been more conscientious in “follow[ing] up” and “coordinati[ng]” with Arlene’s ALTCS providers, after weighing that competing evidence, the juvenile court nonetheless found ADES had “made a diligent effort to provide appropriate reunification services,” as § 8-533(B)(8) requires. The court stated:

I realize the Department was not able to refer the mother for duplicate services that could have been provided through ALTCS, but . . . I think there could have been better follow-up on what she was actually receiving. As I read the permanency report, I still had questions as to whether or not the psychiatric evaluation was ever done and whether an in-home therapist was ever verified, and I assume that they weren’t done because I don’t have any other evidence that they were.

. . . I think CPS has not followed through to the degree it should have. I don’t think that falls short of reasonable efforts, but I will tell you that I think more follow-up and coordination would have been important with the ALTCS providers. I think the mother had services available but for various reasons, including her depression, I think she wasn’t taking advantage of them.

¶14 There is evidence in the record to sustain the juvenile court’s resolution of those conflicts, and this court will not reweigh contradictory evidence or second-guess the finder of fact. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927 (appellate court does

not reweigh evidence but determines only if judgment supported by substantial evidence); *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207 (reviewing court defers to juvenile court to determine witness credibility, evaluate evidence, and resolve conflicts).

¶15 The record contains reasonable evidence to sustain the juvenile court’s factual findings, which in turn support its legal conclusions and termination order. *See generally Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (termination order upheld unless factual findings unsupported by any reasonable evidence and thus clearly erroneous). Because the evidence was sufficient to establish both of the statutory grounds alleged for termination and demonstrates that severance was in Angel’s best interests, we reject Arlene’s contentions to the contrary and affirm the juvenile court’s order terminating her parental rights to Angel.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge